



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1998

Ms. Lisa Aguilar
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR98-0705

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 113254.

The City of Corpus Christi Civil Service Office (the "city"), which your office represents, received a request for "copies of the civil service record" of certain named city police officers. In response to the request, you submitted to this office for review a copy of the two documents, which you assert are responsive. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the claimed exceptions and have reviewed the information submitted.

The city asserts that the information in sections five and six of each of the submitted documents is excepted from disclosure under the claimed exceptions. Section 552.101 of the Government Code excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses both common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together for the submitted records.

The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. We have marked and tagged the information which you must withhold pursuant to section 552.101 in conjunction with common-law privacy. However, most of the remaining information at issue relates to the performance and behavior of a public employee. There is a legitimate public interest in the work behavior of a public employee and how he or she performs job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow). Thus, to the extent the submitted information relates to a public employee's job performance, we conclude that the public has a legitimate right to this information. Therefore, except for the information which we have marked with red brackets, we did not find any other information which is protected from disclosure by the common-law right to privacy pursuant to sections 552.101 or 552.102.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive, flowing style. Above the signature, the words "Yours very truly," are printed. Below the signature, the name "Sam Haddad" is printed.

Sam Haddad
Assistant Attorney General
Open Records Division

Sh/rho

Ref.: ID# 113254

Enclosures: Marked information

cc: Mr. Michelle R. DeLaBarre
10440 South Drive, # 2804
Houston, Texas 7709
(w/o enclosures)